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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

J.C.,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E050849

(Super.Ct.No. SWJ005831)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Michael J. Rushton,  
Judge. Petition denied.

Daniel L. Vinson for Petitioner.

No appearance for Respondent.

Pamela J. Walls, County Counsel and Anna M. Deckert, Deputy County Counsel,  
for Real Party in Interest.

Petitioner is the mother (mother) of N.C., a dependent child. Mother petitions this Court to reverse the juvenile court's order terminating reunification services after 18 months and setting a Welfare and Institutions Code section 366.26<sup>1</sup> hearing at which it will select a permanent plan for N.C. Mother argues the juvenile court erred when it determined that returning N.C. to her on family maintenance would create a substantial risk of detriment to N.C. under section 366.22, subdivision (a). As discussed below, we conclude that substantial evidence supports the juvenile court's finding of detriment.

### **STATEMENT OF FACTS**

#### *Detention*

On September 13, 2008, employees at a church called law enforcement after they observed mother throwing liquid on the church windows and making verbal comments.<sup>2</sup> Mother fled with the 18-month-old N.C. in a stroller, and eventually dropped down in the dirt. N.C. was wearing only pants, and mother had no food or water available for N.C. in the heat. Mother stated that she was not taking her medication for bipolar disorder, that she and N.C. had been homeless for the previous two weeks, and that she had been arrested in other counties for vandalism. Mother was admitted to the hospital for a section 5150 evaluation and N.C. was removed from her care.

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<sup>1</sup> All section references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Mother asserted that she was attempting to wash the church windows, as she had done at other churches to make money.

On September 16, 2008, the Riverside County Department of Public Social Services (Department) filed a section 300 juvenile dependency petition regarding N.C., alleging failure to protect (subdivision (b)) and no provision for support (subdivision (g)). The Department filed the petition because of mother's transient lifestyle, her failure to take her medication for bipolar disorder, her involuntary 72-hour commitment under section 5150, her failure to benefit from family maintenance and reunification services as to other children, and the failure of N.C.'s father (father)<sup>3</sup> to provide for N.C. and to protect him from mother.

On September 17, 2008, the juvenile court formally detained N.C.

#### *Jurisdiction and Disposition*

In the jurisdiction and disposition report filed October 3, 2008, the social worker reported that mother's first husband had custody of their three children, ages 7, 9 and 11. Mother had a child welfare history dating back 1990, with numerous contacts since 2001.

Father told the social worker that mother does not take her psychotropic medications because "she doesn't think she has a problem." He described mother as "uncontrollable" and "nuts" and stated she threw away N.C.'s car seat, diapers and clothing because she believes they are cursed. He also stated that mother would often "forget to feed" N.C. and that the previous year "he almost died from malnutrition." Father stated he gave mother their recreational vehicle to live in, but that she had recently destroyed it and it was towed. Father stated he is a truck driver and is rarely home.

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<sup>3</sup> Mother and father were married at that time.

Father also told the social worker that “it all started falling apart” for mother at the end of August or early September of that year, which is when mother destroyed the recreational vehicle, threw away N.C.’s things, and was arrested for vandalism. “When she flipped, she left the baby.” About two days before the most recent incident, mother came to father’s apartment, while he was away working, to visit N.C. Father’s adult son would not let mother take N.C. to the park, and so a verbal and physical altercation took place. Police arrived and allowed mother to take N.C. because no family law orders prevented it.

N.C. was diagnosed with malnutrition shortly after being detained. Mother did not initially recognize N.C. when she first visited with him on September 30, 2008, and required redirection to pay attention to him.

At the contested jurisdiction and disposition hearing held on November 4, 2008, the juvenile court sustained the allegations under section 300, subdivision (b), that mother does not take her psychotropic medications and lives a transient lifestyle, and father allowed N.C. to remain in mother’s care despite these issues. The court ordered mother and father to participate in reunification services, ordered supervised visitation, and ordered the Department to begin an ICPC to determine whether father’s brother and his wife in Arkansas would be a suitable placement.

#### *Six-Month Review*

The Department filed a six-month status review report on April 15, 2009, in which it recommended providing mother with six more months of reunification services and terminating father’s services. Mother had not yet found stable housing. She most often

stayed with her adult daughter, at the time of the report was living with friends from church, and at times helped the elderly with cleaning services in exchange for food and shelter. Mother was in the process of getting a divorce from father. Mother was compliant with taking her medications, but declined the physician's request to increase her medication. Mother was having weekly supervised visits with N.C. In January 2009, the visits had to be moved to one of the Department's offices because mother was being inappropriate in front of N.C. as a result of her mental health issues. Mother acted bizarrely, exhibited rapid speech and inability to focus, and was preoccupied by sexual matters and her relationship with father. After the visits were moved to the Department's offices, mother could be directed to act more appropriately and focus more on N.C., although her main focus remained on her relationship with father.

The juvenile court set the six-month review hearing as a contested matter for May 27, 2009. On April 22, mother participated in a psychological evaluation. The psychologist stated that mother suffers from schizophrenia, bipolar disorder, and dependent personality disorder. The psychologist stated that because mother's potential for violence is low but she has little awareness of how her actions affect others, she is "more likely to be neglectful of a child than to physically abuse a child." The psychologist concluded that, in his professional opinion, "little change is likely to occur" and that he would be "highly cautious in the reunification process." At the six-month review hearing held on May 27, 2009, the juvenile court granted mother six more months of reunification services and terminated father's services.

### *Twelve-Month Review*

The Department filed its report for the 12-month status review hearing on November 9, 2009, in which it recommended providing mother with six more months of reunification services. The Department also recommended the court authorize unsupervised overnight and weekend visits. This is because mother was at that time living in a home with her first husband and their adult daughter, along with several of mother's other children and grandchildren. Mother was earning \$1,000 per month providing child care for her grandchildren, and paying a portion of that for rent. Mother stated she and her first husband were not linked romantically, but had arranged a working relationship for the sake of their children and grandchildren. Mother was visiting regularly with N.C. at the Department's offices. The visits were going well and the extended family sometimes attended. The Department expressed concern that mother's continued living arrangement was dependent on her ability to maintain her medication schedule and mental health.

At the 12-month review hearing held on November 24, 2009, the juvenile court continued mother's reunification services and authorized overnight and weekend visits conditioned on mother following her case plan. The court also authorized the Department to return N.C. to mother should the visits be successful.

### *Eighteen-Month Review*

The Department filed the 18-month review report on February 23, 2010. The Department recommended terminating services to mother and authorizing placement of N.C. with his paternal uncle and aunt in Arkansas. Although mother's visits with N.C.

were successful from November until January, Mother lost her residence and employment with her adult daughter around January 2010. Their relationship became strained after mother accused her first husband of abusing and neglecting the children and grandchildren.<sup>4</sup> Mother also stated that she did not agree with her adult daughter's lifestyle choices. As of February 2010, mother began to work as a "house mom" for Set Free Ministries, and shared a room at the shelter with two other women.

In January 2010, visits returned to being supervised by the foster parent. Mother began to exhibit manic behavior at these visits and had trouble focusing on N.C. Mother missed several visits. The social worker also noticed that mother was exhibiting manic behavior during their contacts "such as leaving me 10 to 15-minute voice messages and focusing on inappropriate and off-topic subjects such as pornography, drinking, and prostitution during our conversations."

In an addendum report filed April 8, 2010, the Department reported that mother had moved from the shelter in February and was living in a house with two roommates, to whom she paid \$200 per month in rent. Mother was not employed at that time. On April 13, 2010, the juvenile court continued the matter. The court also ordered the Department to conduct a home evaluation of mother's new residence and address mother's progress in an addendum report.

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<sup>4</sup> On January 17, 2010, police responded to the home to investigate allegations of cruelty to a child. During the investigation, mother walked outside the home and yelled "Why are you talking to him (her first husband), he is evil. I want evil to be stopped. God will take care of all of his children, and I am one of his children. God on the throne will judge all of us. I hope you will not side with the evil. Evil will be stopped tonight." The police found no probable cause to believe an assault had taken place.

In an addendum report filed April 28, 2010, the Department reported that mother was living in a three-bedroom house with the owner and another man whose last name she did not know. Mother met the owner at a restaurant and moved in after discovering he needed a roommate. Mother did not pay rent or have a written lease, but cooked and cleaned in exchange for having her own bedroom. Mother did not have any income.

The 18-month review hearing was held on May 5, 2010. After hearing testimony from mother and her therapist, and argument from all parties, the trial court terminated mother's reunification services and scheduled the section 366.26 selection and implementation hearing for September 2, 2010. The court also ordered that N.C. be placed with his paternal uncle and aunt in Arkansas. This writ proceeding followed.

### **DISCUSSION**

Mother argues the juvenile court erred when it terminated her reunification services instead of placing N.C. with her on family maintenance. Specifically, mother argues substantial evidence does not support the court's finding that return of N.C. to her would create a substantial risk of detriment to N.C.'s safety, protection, or physical or emotional well-being under section 366.22, subdivision (a).

Section 366.22, subdivision (a), provides that at the 18-month hearing, "[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment." (§ 366.22, subd. (a), italics added.)



“In making its determination, the court shall review and consider the social worker’s report and recommendations and . . . shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian . . . .” (*Ibid.*) “““Where, as here, a discretionary power is inherently or by express statute vested in the trial judge, his or her exercise of that wide discretion must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]” [Citations.]’ [Citations.] In the presence of substantial evidence, appellate justices are without the power to reweigh conflicting evidence and alter a dependency court determination. [Citations.]” (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

Here, the court based its finding of detriment on mother’s mental health history and its impact on her ability to “provide a nondetrimental home environment to a young child.” Mother’s mental health issues cause her “inability to maintain the kinds of relationships that would allow a person to live a stable, employed, and successful life-style.”

The record contains substantial evidence to support the court’s findings. During the Department’s involvement with mother from September 2008 until the 18-month hearing in May 2010, mother had six different living arrangements:

- In September of 2008, mother was homeless for about one month.
- From October 2008 to January 2009, mother lived at a home doing domestic work.

Mother stated the man she was working for threw her out when she ignored his sexual advances.

- From January to August 2009, mother lived with a couple from church in exchange for housework.
- From August 2009 to January 2010, mother lived with her first husband and adult daughter. The arrangement ended when mother apparently went through a manic phase and accused her first husband of child cruelty. The charges were not substantiated.
- From January to February 2010 mother lived at the Set Free Ministries Shelter in Moreno Valley. Mother stated she left because the shelter was not “Christian like” and that the people in the shelter are breaking “God’s laws.” Mother reported that she had a disagreement with the person in charge of the shelter.
- Beginning in February 2010, mother lived in the house of a man she had met at a restaurant, receiving food and rent in exchange for housework.

The record amply demonstrates that mother was unable to alleviate one of the major reasons for the dependency—her ability to maintain stable and appropriate housing for a young child. While homelessness does not necessarily compel a finding of detriment, mother has shown that she is only able to maintain housing by depending on others for support, and that her recurring mental health setbacks prevent her from maintaining stable relationships with those from whom she seeks support, including her own adult daughter.

Even mother’s therapist, who testified on her behalf at the 18-month status review hearing, agreed that mother’s lack of mental stability causes her to come into conflict with people upon whom she depends, which directly impacts her ability to maintain a

place to live. The therapist agreed that mother had made very little progress on her housing situation, and that the prognosis for mother's current living arrangement was poor.

To conclude, substantial evidence supports the juvenile court's finding of detriment under section 366.22, subdivision (a), and its consequent decision to terminate reunification services and set a selection and implementation hearing.

**DISPOSITION**

The judgment of the juvenile court is affirmed.

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RAMIREZ  
P.J.

We concur:

McKINSTER  
J.

KING  
J.